

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:

EASTERN LIVESTOCK CO., LLC

CASE NO. 10-93904
CHAPTER 11

DEBTOR

**RESERVATION OF RIGHTS AND OBJECTION TO THIRD
INTERIM APPLICATION OF DEVELOPMENT SPECIALISTS, INC.
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES AS
CONSULTANT FOR JAMES A. KNAUER, CHAPTER 11 TRUSTEE**

Come Bluegrass Stockyards, LLC, Bluegrass Stockyards of Campbellsville, LLC, Bluegrass Stockyards East, LLC, Bluegrass-Maysville Stockyards, LLC, Bluegrass Stockyards of Richmond, LLC, Bluegrass South Livestock Market, LLC,¹ Alton Darnell, East Tennessee Livestock Center, Inc., Moseley Cattle Auction, LLC, Piedmont Livestock Company, Inc., and Southeast Livestock Exchange, LLC (collectively, the “Creditors”), by counsel, and hereby reserve for the final fee application all objections to the allowance and payment of fees and expenses of Development Specialists, Inc. (“DSI”). In support of this Reservation of Rights and Objection, the Creditors respectfully state as follows:

BACKGROUND

1. On December 27, 2010, after consideration of the Notice of Appointment and Application for Order Approving Appointment of Trustee [ECF No. 98] and the accompanying Trustee’s Verified Statement and Notice of Acceptance [ECF No. 98-1] and Affidavit of

¹ The Bluegrass creditors have entered in to a written settlement agreement with the Estate, acting by and through the Trustee, which includes, among other things, a full release of the Trustee and his professionals. Because the settlement has not yet been presented or approved, the Bluegrass creditors join in this reservation of rights at this time, pending such approval.

Disinterest [ECF No. 98-2], the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [ECF No. 102] in the above-captioned bankruptcy case.

2. On December 30, 2010, James A. Knauer, as Chapter 11 Trustee for the Estate of Eastern Livestock Co., LLC (the “Trustee”), filed his Application for Approval of Employment of Development Specialists, Inc. as Consultant to Chapter 11 Trustee [ECF No. 117]. This Application was approved by Order of the Court [ECF No. 257] on February 8, 2011.

3. On June 2, 2011 DSI filed its First Interim Application of Development Specialists, Inc. for Compensation and Reimbursement of Expenses as Consultant for James A. Knauer, Chapter 11 Trustee [ECF No. 523] (the “First Interim Application”). This Application was approved on an interim basis by an Order of this Court entered on July 15, 2011 [ECF No. 604].

4. On November 11, 2011, DSI filed its Second Interim Application of Development Specialists, Inc. for Compensation and Reimbursement of Expenses as Consultant for James A. Knauer, Chapter 11 Trustee [ECF No. 821] (the “Second Interim Application”). This Application was approved on an interim basis by an Order of this Court entered on December 19, 2011 [ECF No. 918].

5. On November 21, 2012, DSI filed its Third Interim Application at of Development Specialists, Inc. for Compensation and Reimbursement of Expenses as Consultant for James A. Knauer, Chapter 11 Trustee [ECF No. 1551] (the “Third Interim Application”), which is at issue herein.

OBJECTION AND RESERVATION OF RIGHTS

6. For reasons previously stated regarding the conduct of the Trustee and lead counsel for the Estate, the Creditors reserve objections to the allowance and payment of fees and

expenses for DSI on both an interim and final basis. To the extent of limitations upon the Trustee as the sole representative of the Estate, some of the services provided by DSI may have been unnecessary and not beneficial to the Estate, as futile activities.

7. To the extent that the Court enters an order approving the Third Interim Application, the order will not be a final approval of the fees or expenses. *See Matter of Taxman Clothing Co.*, 49, F.3d 310, 312 (7th Cir. 1995) (“The law is clear . . . that all interim awards of attorney’s fees in bankruptcy cases are tentative.”) (citations omitted); *In re Eckert*, 414 B.R. 404, 409 (Bankr. N.D. Ill. 2009) (“Interim fee awards under 11 U.S.C. § 331 are discretionary and are subject to reexamination and adjustment during the course of the case The Court may review the case at its conclusion and take into account the results obtained in making a final allowance.”) (citations omitted); *In re Gibson*, 2010 WL 774573, *10 (Bankr. C.D. Ill. 2010) (interim orders allowing fee applications are subject to further review and modification by court) (citations omitted).

8. Against this background, a lengthy objection to the Third Interim Application is not required at this interim stage. The Creditors reserve any and all rights to object to the final fee application filed by DSI in this Bankruptcy Case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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